

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**ADAM LEE SIMMONS,**

**Movant,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**No. 1:24-cv-01101-STA-jay**

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**ORDER GRANTING MOTION TO DISMISS § 2255 MOTION  
WITHOUT PREJUDICE**

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Adam Lee Simmons has filed a motion to dismiss his *pro se* motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 without prejudice. (ECF No. 5.) The Government filed a response to the § 2255 motion a day after the motion to dismiss was filed. (ECF No. 6.)

Courts look to the sequencing of filings when deciding whether to allow a movant to voluntarily dismiss a § 2255 motion under Rule 41(a)(2). *See Aamot v. Kassel*, 1 F.3d 441, 445 (6th Cir. 1993). The majority of federal district courts that have considered the issue have agreed that voluntary dismissal is available in § 2255 proceedings without prejudice if the movant provides the notice before a response is filed, as in the present case. *See, e.g., Brimite v. United States*, 2006 WL 539522, at \*1 (W.D. Mich. Mar. 3, 2006) (granting Bromide’s motion to voluntarily dismiss his § 2255 motion and dismissing without prejudice); *United States v. Jones*, 2018 WL 832867 (E.D. Ky. Feb. 13, 2018) (concluding that “Jones’s notice of voluntary dismissal is valid and self-effectuating” because his notice preceded any response by the government); *White*

*v. Berkebile*, 2009 WL 6700835, at \*2-3 (S.D.W.V. Dec. 4, 2009) (dismissing § 2255 motion without prejudice when the movant filed a notice of voluntary dismissal before the United States filed a response).

Accordingly, the Court **GRANTS** Simmons' motion to dismiss his § 2255 motion without prejudice. The Clerk of the Court is **DIRECTED** to enter judgment.

**IT IS SO ORDERED.**

**s/ S. Thomas Anderson**  
S. THOMAS ANDERSON  
UNITED STATES DISTRICT JUDGE

Date: July 30, 2024